

REMARKS

The application has been reviewed in light of the Non-Final Office Action mailed June 30, 2005. At the time of the Non-Final Office Action, claims 1-38 were pending in this application. Claims 1-30 have been allowed. The Applicant gratefully acknowledges the allowance of these claims. Claims 31-38 have been rejected. Claim 31 has been amended and claims 34-38 have been canceled without prejudice to future prosecution. The amendments to claim 31 are believed to place the remaining pending rejected claims in condition for allowance and such action is respectfully requested for the reasons presented below.

Election

Applicant hereby affirms its election to prosecute the invention of Species I.

Claim Rejections 35 U.S.C. § 102(b)

Claims 31-38 have been rejected under 35 U.S.C. 102(b) as being anticipated by Dech (U.S. 4,714,117) ("Dech"). Since claims 34-38 have been canceled, this rejection is moot as to those claims. The Applicant respectfully traverses this rejection as to claims 31-33.

Dech relates to a method of completing a drainhole wellbore. In particular, Dech attempts to address the problem of prior art drainhole wellbore completion techniques, which purportedly have failed to provide isolation along the horizontal or drainhole portion of the wellbore and therefore have limited future remedial operations in the drainhole portion of the wellbore. Dech; Col. 2, lines 7-10. Dech attempts to solve this problem by placing in the drainhole a casing string having alternating casing subs and external casing packer subs, which carry an elastic member adapted to expand away from the casing packer sub toward and into contact with the adjacent well of the wellbore. *Id.* at Col. 2, lines 35. Dech discloses activating

one or more of the external casing packer subs to expand the elastic members into contact with the drainhole wellbore wall and thereby accomplish multi-zone isolation. *Id.* at Col. 2, lines 35-40. Dech further discloses pumping an uncured cementitious fluid 110 into the interior of the casing string 90 to expand the packers. *Id.* at Col. 6, lines 31-26.

Dech does not, however, disclose pumping a fracturing fluid into the interior of the casing string 90 or the surrounding formation. Rather, Dech describes the fluid 110 being pumped into the interior of the casing string 90 as including:

. . . suitable gases such as air as well as liquids or fluidized material such as cement. Generally, jelled water or jelled hydrocarbon liquids such as crude oil or diesel fuel can be used. The jelling agent can be any material which renders the liquid more viscous and which is not deleterious to the elastic member or metal from which the external casing packer is formed. Any cementing material normally employed in well completions can be employed in this invention.

Id. at Col. 6, lines 60-68. The Applicant is unable to find anywhere in Dech a teaching or suggestion that the fluid 110 can be a fracturing fluid. Nor does the Applicant find a teaching or suggestion in Dech of pumping the fluid 110 out of the casing string 90 at a pressure sufficiently high to fracture the surrounding formation.

In contrast, independent claim 31 has been amended to recite “[a] method of treating and completing a well formed in a subterranean formation having one or more production zones, comprising the steps of: . . . performing a production enhancement operation through the body of the downhole tool, wherein the production enhancement operation includes the step of pumping a fracturing fluid through the body of the downhole tool and out the plurality of frac openings at a sufficient pressure to fracture one or more of the production zones.”

(emphasis added) The Examiner contends that although Dech may not disclose that the fluid 110 is a fracturing fluid, it is inherently capable of fracturing. Office Action at 3. Even if that were

the case, Dech still fails to disclose the step of fracturing one or more production zones using a fracturing fluid, as now required by independent claim 31, as amended. (emphasis added). Indeed, it is not entirely clear from Dech whether the formation disclosed in that reference is of the type that one would even want to fracture. All that is known from the reference is that the formation is of the type requiring localized remedial work. Dech, Col. 7, line 34. Accordingly, a person having ordinary skill in the art would not likely be lead to use the casing string of Dech in a fracturing method. Indeed, there is no motivation to do so. Accordingly, amended independent claim 31, and corresponding claims 32-33 depending therefrom, are believed patentable over Dech. The Examiner is therefore requested to withdraw his rejection of these claims and allow these claims to issue.

SUMMARY

In light of the above amendments and remarks, Applicant respectfully submits that the application is now in condition for allowance and early notice of the same is earnestly solicited. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile or electronic mail, as indicated below.

Applicant believes that there are no fees due in association with the filing of this Response. However, should the Commissioner deem that any fees are due, including any fees for any extensions of time, Applicant respectfully requests that the Commissioner accept this as a Petition therefore, and directs that any fees be debited from Baker Botts L.L.P., Deposit Account No. 02-0383, (*formerly Baker & Botts, L.L.P.*) Order Number 063718.0318.

Respectfully submitted,

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